

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

ear when a 55-gallon drum he was moving exploded while in the performance of duty. He did not stop work. On December 18, 201 OWCP accepted this claim for tinnitus, right ear.

On April 19, 2018 appellant filed a claim for compensation (Form CA-7) for a schedule award and submitted a series of reports dated February 2 through March 19, 2018 from Margaret E. Kuczynski, a nurse practitioner.

In a June 11, 2018 development letter, OWCP requested that appellant submit a detailed medical report from a physician addressing his permanent impairment due to his accepted employment-related condition in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*).<sup>2</sup>

Thereafter, OWCP received a July 2, 2018 report from Ms. Kuczynski.

By decision dated August 16, 2018, OWCP denied appellant's schedule award claim, finding that he failed to submit any medical evidence of permanent impairment.

On September 6, 2018 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

In a September 5, 2018 letter, appellant asserted that Dr. Neal Obermyer, a Board-certified otolaryngologist, had reviewed Ms. Kuczynski's reports and concurred with her conclusions.

By decision dated November 9, 2018, OWCP's hearing representative set aside the August 16, 2018 decision and remanded the case for further development of the medical evidence, including review by a district medical adviser (DMA) and a *de novo* decision.

On November 20, 2018 OWCP referred appellant's record along with a statement of accepted facts (SOAF) to Dr. Jeffrey M. Israel, a Board-certified otolaryngologist serving as the DMA. Dr. Israel responded on November 21, 2018 noting that there was no second opinion report or audiogram in the record.

On December 6, 2018 OWCP requested an audiogram from appellant's attending physician.

On March 19, 2018 appellant underwent an audiogram.

By decision dated January 16, 2019, OWCP denied appellant's schedule award claim.

In a letter dated January 31, 2019, appellant requested that the acceptance of his claim be expanded to include bilateral tinnitus and hearing loss. In a February 25, 2019 note, Dr. Obermyer diagnosed noise-induced bilateral high-frequency sensorineural hearing loss with tinnitus as related to appellant's accepted employment injury. He reviewed a February 25, 2019 audiogram and found that appellant had reached maximum medical improvement (MMI).

---

<sup>2</sup> A.M.A., *Guides*, 6<sup>th</sup> ed. (2009).

Dr. Obermyer completed a report on July 26, 2019 and noted appellant's acoustic trauma in 2017 and diagnosed bilateral sensorineural hearing loss and tinnitus, worse on the right. On November 25, 2019 he added a note to Ms. Kuczynski's July 2, 2018 note, indicating that appellant had experienced bilateral tinnitus since the accepted July 4, 2017 employment injury described by Ms. Kuczynski.

On January 20, 2020 appellant requested reconsideration of his schedule award decision. On January 30, 2020 OWCP expanded the acceptance of his claim to include left ear tinnitus.

On February 21, 2020 OWCP referred appellant, a SOAF, and an outline for otologic evaluation for a second opinion examination with Dr. Warren Brandes, an osteopath and Board-certified otolaryngologist.

In a March 19, 2020 report, Dr. Brandes described appellant's history of injury on July 4, 2017. He diagnosed low-frequency conductive hearing loss, bilaterally, and high-frequency sensorineural hearing loss, bilaterally. Dr. Brandes found that appellant had sustained significant acoustic trauma on July 4, 2017 resulting in bilateral hearing loss and tinnitus. He reviewed an audiogram conducted by an audiologist on March 12, 2020 in which he found demonstrated losses of 30, 25, 10, and 15 decibels (dBs) on the right and 40, 25, 15, and 15 dBs on the left at 500, 1,000, 2,000, and 3,000 Hertz (Hz), respectively. Utilizing the sixth edition of A.M.A., *Guides*, Dr. Brandes calculated appellant's total monaural hearing loss for appellant's right ear by adding his right ear dB losses to a total of 80 and then dividing by 4 to obtain the average hearing loss of 20 dBs. This average loss was then reduced by 25 dBs to equal -5, which was multiplied by the established factor of 1.5 to compute a -7.5 percent monaural hearing loss in the right ear, resulting in 0 percent permanent impairment. Dr. Brandes calculated appellant's total monaural hearing loss for appellant's left ear by adding his left ear dB losses to a total of 95 and then dividing by 4 to obtain the average hearing loss of 23.75 dBs. This average loss was then reduced by 25 dBs to equal -1.25, which was multiplied by the established factor of 1.5 to compute a -1.875 percent monaural hearing loss in the left ear, also resulting in 0 percent permanent impairment. Dr. Brandes further found that appellant had three percent permanent impairment due to moderate tinnitus.

On July 9, 2020 OWCP referred Dr. Brandes' report and a SOAF to the DMA, Dr. Israel, for review. On July 18, 2020 the DMA indicated that he reviewed appellant's SOAF and medical records, including Dr. Brandes' March 19, 2020 report. He determined that appellant had reached MMI on March 12, 2020 because it was the date of the audiogram which was used by Dr. Brandes to calculate appellant's hearing loss and was his most recent audiogram. Dr. Israel reviewed the March 12, 2020 audiogram and found that it demonstrated zero percent monaural hearing loss in the right and left ear. He agreed with Dr. Brandes' calculations of appellant's monaural hearing loss in both ears. Dr. Israel further found that appellant was not entitled to a schedule award for tinnitus as there was no ratable hearing loss.

By decisions dated July 21, 2020, OWCP modified its January 16, 2019 decision to accept that appellant had sustained bilateral loss of hearing due to his accepted employment injury. However, it further found that he had not established a ratable hearing loss for schedule award purposes and that, as he was not entitled to a schedule award for loss of hearing, he was not entitled to a schedule award for tinnitus.

## **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>3</sup> and its implementing regulations<sup>4</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>5</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>6</sup>

A claimant seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim.<sup>7</sup> With respect to a schedule award, it is the claimant's burden of proof to establish permanent impairment of a scheduled member or function of the body as a result of his or her employment injury.<sup>8</sup> The medical evidence must include a detailed description of the permanent impairment.<sup>9</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>10</sup> Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each frequency are averaged. Then, the fence of 25 dBs is deducted because, as the A.M.A., *Guides* point out, losses below 25 dBs result in no impairment in the ability to hear everyday speech under everyday conditions. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss, the lesser loss is multiplied by five, then added to the greater loss, and the total is divided by six to arrive at the amount of binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>11</sup>

---

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Id.* at § 10.404(a).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *id.*, at Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>7</sup> *B.B.*, Docket No. 19-1491 (issued February 3, 2020); *John W. Montoya*, 54 ECAB 306 (2003).

<sup>8</sup> *R.R.*, Docket No. 19-0750 (issued November 15, 2019); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>9</sup> *B.B.*, *supra* note 7; *Vanessa Young*, 55 ECAB 575 (2004).

<sup>10</sup> A.M.A., *Guides*, 250.

<sup>11</sup> *J.E.*, Docket No. 19-1325 (issued December 13, 2019); *E.C.*, Docket No. 19-1007 (issued November 8, 2019).

## ANALYSIS

The Board finds that appellant has not met his burden of proof to establish ratable hearing loss warranting a schedule award.

OWCP properly referred appellant to Dr. Brandes for a second opinion evaluation. In his March 19, 2020 report, Dr. Brandes noted that audiometric studies demonstrated binaural sensorineural hearing loss with tinnitus due to the accepted July 4, 2017 employment injury. He concluded that appellant had zero percent ratable hearing loss and three percent permanent impairment due to moderate tinnitus.

OWCP referred the case, along with a copy of Dr. Brandes' March 19, 2020 report, to a DMA, Dr. Israel, to assess the percentage of permanent impairment. In his July 18, 2020 report, the DMA reviewed Dr. Brandes' report and audiometric findings, properly applied OWCP's standardized procedures, and concurred with Dr. Brandes in finding that appellant had no monaural or binaural hearing loss. He totaled the dB losses to equal 95 on the left and 80 on the right. These values, when divided by four, resulted in average hearing loss of 23.75 on the left and 20 on the right, which when reduced by the 25 dBs fence, resulted in zero percent loss.

The Board finds that, as the March 12, 2020 audiogram did not demonstrate that appellant's hearing loss was ratable, he is not entitled to a schedule award for his accepted hearing loss condition. Although appellant has accepted employment-related hearing loss, it is insufficiently severe to be ratable for schedule award purposes.<sup>12</sup>

While Dr. Brandes found that appellant had three percent permanent impairment due to tinnitus, Dr. Israel found, and the Board has held, that in the absence of ratable hearing loss, a schedule award for tinnitus is not allowable pursuant to the A.M.A., *Guides*.<sup>13</sup> Accordingly, as appellant does not have ratable hearing loss, the Board finds that he is not entitled to a schedule award for tinnitus.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased permanent impairment.

## CONCLUSION

The Board finds that appellant has not met his burden of proof to establish ratable hearing loss warranting a schedule award.

---

<sup>12</sup> *J.R.*, Docket No. 21-0909 (issued January 14, 2022); *W.T.*, Docket No. 17-1723 (issued March 20, 2018); *E.D.*, Docket No. 11-0174 (issued July 26, 2011).

<sup>13</sup> *C.D.*, Docket No. 20-0790 (issued November 13, 2020); *W.T.*, *id.*; *E.D.*, *id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 21, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 27, 2022  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board